

Approved January 25, 1989
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY & SMALL BUSINESS

The meeting was called to order by Senator Alicia Salisbury at
Chairperson

1:40 ~~am~~/p.m. on January 18, 1989 in room 527-S of the Capitol.

All members were present except:

Senator Dan Thiessen - Excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes Office
Mary Allen, Committee Secretary

Conferees appearing before the committee:

Ray D. Siehndel, Department of Human Resources
Robert A. Anderson, Division of Workers' Compensation
William Morrissey, Division of Workers' Compensation
David Shufelt, Division of Workers' Compensation
Richard Thomas, Division of Workers' Compensation
Chris Cowger, Kansas Insurance Department

The meeting was called to order by the Chairman, Senator Alicia Salisbury, who introduced the Vice-Chairman, Senator Lana Oleen, and the staff. The Chairman told the Committee that an excused absence is necessary only when a scheduled vote is taken in the Committee. She announced that Thursday, January 26, has been scheduled as a day when bill requests may be presented; however, such requests may be made at the beginning of any meeting of the Committee.

Chairman Salisbury introduced Ray Siehndel, Acting Secretary of the Department of Human Resources, to brief the Committee on Workers' Compensation. Mr. Siehndel spoke briefly to the Committee and introduced Robert Anderson, Director of the Division of Workers' Compensation. Mr. Anderson gave a brief report on the centralization of that Division's regional offices with the Department of Human Resources' facilities (Attachment I). He also discussed (1.) the administration of the Division of Workers' Compensation; (2.) how the new act (July 1, 1987) is working; and (3.) minor changes to the Workers' Compensation Act that need to be considered by the Committee (Attachment II). In addition to those suggested changes, Mr. Anderson passed out copies of specific suggested changes to K.S.A. 44-510g (Attachment III) concerning the Vocational Rehabilitation section of the Workers' Compensation Act.

William Morrissey, Assistant Director of the Division of Workers' Compensation, addressed the Committee on computerization in that Division. He discussed the ways his Division is using the Department of Human Resources' mainframe computer. (Attachment IV)

David Shufelt, Assistant Director of the Division of Workers' Compensation, presented an overview of the Judicial Section of that Division and current efforts to eliminate the backlog of submitted cases not decided in a timely manner. (Attachment V) He provided the Committee with an Administrative Law Judge Grid Map. (Attachment VI)

The Rehabilitation Section of the Division of Workers' Compensation under the new act was discussed by its administrator, Richard Thomas. (Attachment VII) He provided a chart showing caseload data from July 1, 1987 through December 31, 1988. (Attachment VIII)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY & SMALL BUSINESS

room 527-S, Statehouse, at 1:40 ~~am~~/p.m. on January 18, 1989.

Chris Cowger, Staff Attorney for the Kansas Insurance Department assigned to administration of the Workers' Compensation Fund, spoke on the objectives and operation of that Fund. He stated that the Fund exists pursuant to statute with the intent of the state policy to encourage the hiring of handicapped employees by relieving employers of liability under certain circumstances. (Attachment IX) Mr. Cowger discussed receipts and expenditures of the Fund (Attachment X), general statistical information concerning the Fund (Attachment XI) and the Workers' Compensation Fund Report for the first six months of FY 1989 (Attachment XII).

The meeting was adjourned at 2:30 p.m. by the Chairman.

GUEST LIST

| <u>NAME</u> | <u>REPRESENTING</u> |
|--------------------|--|
| RICHARD THOMAS | DIV WORKERS COMPENSATION REHAB ADMINISTRATOR |
| David Shufelt | Assistant Director Division of Workers Compensation |
| Robert A. Anderson | Director, Division of Workers Compensation Department of Human Resources. |
| Bud Langston | KRCC |
| Bill Morrissey | Dept Human Resources Div of Work Comp |
| Roge BARR | TRANSPORTATION COMMUNICATION UNION |
| Don Kinosey | UTU |
| Chris Cowger | K.S. Ins. Dept. |
| Ron Todd | " " " " |

AN EXECUTIVE SUMMARY FROM ROBERT A. ANDERSON, DIRECTOR
DIVISION OF WORKERS COMPENSATION, DEPARTMENT OF HUMAN RESOURCES
PREPARED FOR THE SENATE LABOR, INDUSTRY & SMALL BUSINESS
COMMITTEE FOR A BRIEFING JANUARY 18, 1989

TOPIC: Director's report on efforts to centralize the Division of Workers Compensation's regional offices with Department of Human Resources' facilities.

BACKGROUND: Workers Compensation has been a Division of the Kansas Department of Human Resources since 1976. Prior to 1986, regional offices of Administrative Law Judges were located in private buildings, without efforts being made to have centralization or co-location with Department of Human Resources facilities. The lack of centralization thwarted the Division of Workers Compensation's initial plans for computerization and docket control.

In 1987 under the guidance of then Secretary of Human Resources Dennis Taylor, and Acting Secretary Ray Siehndel, efforts were made to locate office space for the Division of Workers' Compensation's regional offices, in existing state-owned buildings, or to co-locate their offices with other Department of Human Resources Division's in privately owned buildings. This co-location of services was designed for centralization, and it would also enable the Division of Workers Compensation to have access to computer lines from the Division of Informational Systems and Communication (DISC) in the regional offices which would give us on-line capabilities with the Department of Human Resources' mainframe computer. The Division's computerization plans that were initially started in 1985 would allow the Director's office to have docket control of all regional offices that had access to the DISC computer lines, and Department of Human Resources' mainframe computer. The computerization of the Division of Workers Compensation is only in its initial stage; however, our ability to collect and retain viable data and to provide more timely public services to employers, insurance companies and injured workers has been greatly improved by the speed and accuracy of the computer.

IMPLEMENTATION: In July 1988 after I was appointed as Director of the Division of Workers Compensation, several regional office moves were made that brought us closer to the Department of Human Resources' goal of complete centralization, and the Division of Workers Compensation's goal of docket control and computerization.

1. In August 1988, the regional office of Administrative Law Judge Steve Howard was moved from a privately-owned multipurpose office building to the Employment and Training Center,

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*Attachment I
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Overland Park, Kansas. This new location is co-located with other Department of Human Resources' offices and gave the Division of Workers Compensation on-line capabilities with one of the two (2) Overland Park offices, and more floor space.

2. In September 1988, the regional offices of Administrative Law Judges' David V. Jackson and John D. Clark were moved to the Wichita Unemployment and Training Center in Wichita, Kansas. This new location is co-located with other Department of Human Resources' offices and gave the Division of Workers Compensation on-line capabilities with the Wichita office, and more floor space.

3. In October 1988, an eighth Administrative Law Judge was hired under authority of H. B. 2832 (which allows an increase in the number of Workers Compensation Administrative Law Judges from seven to ten). The new Administrative Law Judge's regional office was located in Salina, Kansas in December 1988, in a building with other Department of Human Resources' offices. The Division of Workers Compensation now has on-line capabilities with the Salina office.

FUTURE PLANS: Early this year, we expect to be able to run DISC computer lines from existing state facilities in Liberal, Overland Park, and Kansas City, Kansas to our regional offices located in those cities so every regional office will be "on-line" with DHR's mainframe computer. At that time, the Division of Workers Compensation will have complete on-line capabilities with, and between all seven (7) regional offices.

DERIVATIVE RESULT: After those remaining three offices are "on-line" with DHR's mainframe computer, the Division of Workers Compensation will be able to have docket control by computerization and, electronic mail through the use of an office automation system called Professional Office System (PROFS). There are many functions available to the PROFS user which would be best described as an electronic desk/mailman/secretary/calendar all rolled up into one software package.

The use of PROFS by the Division of Workers Compensation regional offices and Director's office will allow the Division to utilize electronic mail between the Department of Human Resources and all the Division's regional offices. For example, in July 1988, it took three days and several hours of secretarial time, to coordinate the scheduling of a Judges' meeting. With PROFS, that same scheduling and coordination would take less than 30 seconds.

The docket control the Division of Workers Compensation has been striving for, will allow the Director's office to track the progress of any Workers Compensation file regardless of which regional office it may physically be in, through use of any of the nine (9) docket files that have been created by a DHR programmer assigned to the Division of Workers Compensation.

These docket screens: (1) social security file; (2) docket number file; (3) employer file; (4) lawyer file; (5) judges' file; (6) carrier file; (7) coverage file; (8) rehabilitation file; and, (9) vendor file, eliminate the need for time consuming research by hand, and downtime spent looking for lost or misplaced files. The Division of Workers Compensation now averages over 42 research request each day, and have received as many as 200 requests in one day. Prior to the Division of Workers Compensation records being computerized, it would take over 30 minutes to complete one research request. With the use of the computer, these record requests are now being completed in less than 10 minutes and we expect to improve on that time after we are completely computerized, and our older records have been placed into the computer files.

SUMMARY: Without the centralization efforts initiated by the Department of Human Resources, any efforts to computerize the Division of Workers Compensation would have been cost prohibited. The entire staff at the Division of Workers Compensation is pleased with the preliminary results of our computerization, and our docket control system. We look forward to being "on-line" in all regional offices in the very near future and using the PROFS system to communicate between offices, which will eliminate the frustrating and time consuming "phone-tag".

pc: Each Senator
Acting Secretary Ray Siehndel

AN EXECUTIVE SUMMARY FROM ROBERT A. ANDERSON, DIRECTOR
DIVISION OF WORKERS COMPENSATION, DEPARTMENT OF HUMAN RESOURCES
PREPARED FOR THE SENATE LABOR, INDUSTRY & SMALL BUSINESS
COMMITTEE FOR A BRIEFING JANUARY 18, 1989

TOPIC: Director's Report to Committee on (1) the administration of the Division of Workers Compensation; (2) on how the new act (July 1, 1987) is working; and (3) on minor changes to the Workers Compensation Act that need to be considered by the Committee.

I. THE ADMINISTRATION OF THE DIVISION OF WORKERS COMPENSATION.

A. DIRECTOR'S INITIAL ASSESSMENT OF THE DIVISION OF WORKERS COMPENSATION JUNE 1 THROUGH JULY 20, 1988. (As reported to Governor Hayden and former (DHR) Secretary Dennis Taylor, and Acting Secretary Ray Siehndel, Department of Human Resources on July 20, 1988 in a DHR staff meeting. (After taking office on June 1, 1988 as Director designate, and working closely with former Director John Rathmel; until July 1, 1988 and when I assume full responsibility for the Division of Workers Compensation; and after working for three weeks I made an initial assessment.) I found:

1. Justifiable criticism of Director's office's failure to timely decide Director's Reviews.
 - (a) Backlog of undecided Reviews; some more than thirteen (13) months old.
 - (b) K.S.A. 44-523(c) applications for transfer of case from Administrative Law Judge to Assistant Director.
 - (c) Written criticism by employees/employers to governmental branch.
2. Justifiable criticism of the Director's Office, failure to give meaningful review of contested Administrative Law Judges' decisions.
 - (a) Public perception that Director's Office was rubber stamping decisions (affirming Administrative Law Judges decision without reviewing evidence).
 - (b) Written criticism in newspaper editorials, industry magazines.

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3. Inconsistent rulings by Administrative Law Judges on clear, concise statutory issues.
4. Director's Office failure to decide controversial statutory issues or enforce Director's rules.
5. Director's Office attitude to "Err in favor of the claimant" alienated industry and employers causing system to lose its balance of equity (when considered in light of the burden of proof requirement of the Act).
6. Failure to use widespread advertisement to fill vacant Administrative Law Judge positions, which limited qualified applicant pool.

B. DIRECTOR IMMEDIATE GOALS AS OF JULY 30, 1988.

1. To place the Division of Workers Compensation in a position to expeditiously deliver the legislative mandated service to all parties involved in Workers Compensation litigation.
2. To have timely, consistent, fair and impartial application of the Workers Compensation Act on a statewide basis.
3. To provide a timely and meaningful appellate process at the Director's Review level.

C. DIRECTOR'S LONG RANGE OBJECTIVES FOR DIVISION OF WORKERS COMPENSATION IN FISCAL YEAR 1989, AS PROJECTED ON JULY 20, 1988.

1. Increase efficiency of administrative services of the Division of Workers Compensation through computerization and establish timely judicial decisions and Director's Reviews.
2. Establish a meaningful appellate review of contested Administrative Law Judge's decisions and abolish the perception of "rubber stamp" affirmations.
3. Cost reduction to industry, insurance companies and injured workers, to include medical costs containment, and proposed medical fee schedules.
4. Establish meaningful dialogue between the Director's Office and labor and industry; and create an effective working relationship with Labor and Industry Committee legislators.
5. Consistent interpretation of old and "new act" that

gives expression to the legislative intent of the statutes.

6. Reestablish the integrity of the agency and return the balance of the system from a "liberal interpretation doctrine" to a fair and impartial application of the Workers Compensation Act on new application cases, in compliance with statutory mandates.

D. DIRECTOR'S PROPOSALS TO MEET OBJECTIVES FOR DIVISION OF WORKERS COMPENSATION IN FISCAL YEAR 1989:

1. Computerization of public service task such as (a) record research; (b) employer insurance coverage records and (c) implementation of electronic mail.
2. Docketing statements to be used with all applications for Director's Reviews.
3. Strongly enforce docket control of Administrative Law Judges' dockets and enforcement of terminal dates, eliminating overburden some evidentiary records.
4. Reduction of the evidentiary record by the use of discovery depositions, reducing the need for some preliminary hearings and encouraging settlements.
5. Co-locate offices of the Division of Workers Compensation with existing Department of Human Resource facilities.
6. Redistricting three of the current Administrative Law Judges' territories and establishing a new territory of north central Kansas.
7. Reestablish a tri-annual or quarterly newsletter, and utilize Department of Human Resources "resource" newsletter.
8. Conduct the annual seminar at co-locations and change the programs format to be more informative.
9. Statewide advertisement for open positions through legal publications.
10. To form a task force to study the need for medical fee schedules in Kansas for Workers Compensation.

E. PROJECTED DERIVATIVE RESULT FROM REACHING GOALS

1. A reestablish equitable balance to the administration of the Workers Compensation Act; a

redirected public perception of the Division of Workers Compensation to that of a fair and impartially administered public agency; and as an encouragement to old businesses to remain in Kansas and new businesses to explore development in Kansas, which should create and save more jobs and give a much needed boost to the State's economic development.

F. PROGRESS REPORT ON ACTUAL IMPLEMENTATION OF DIRECTOR'S PLAN.

1. The Division of Workers Compensation is now computerized, with nine (9) separate docket screens. We expect by July 1, 1989 to be completely "on-line" with all regional offices, and have the old records entered into the computer for easy access on research requests.
2. Docketing statements are now received in 95% of cases, which has resulted in some settlements, and reduced the time it takes to review the evidentiary record. We suspect other Director's Reviews are not filed, that would have been filed by knee jerk reactions to an adverse award by litigants being forced to specify their grievances in writing through the docketing statements.
3. Docket control by Administrative Law Judges has resulted in more settlements, and a closer controlled system, which is beginning to ease the judicial backlog.
4. Discovery depositions are being utilized by all parties, and it is believed that more settlements are being held, fewer preliminary hearings are being held, and employers are voluntarily providing information more timely; and finally, parties are discussing their cases outside the courtroom which results in more settlements.
5. Our centralization efforts with DHR have resulted in our computerization goals being reached, and establishing the ability to use the PROFS system.
6. A new Administrative Law Judge hired in October, 1988 has reduced the driving time of three (3) Administrative Law Judges, and relieve the total number of cases assigned to those Judges. (See Administrative Law Judges group map.)
7. The newsletter has been expanded to include information and training. Our circulation has increased by over 30% from 1900 to 2500. We have

decreased improper applications for review on preliminary hearings from 4 or 5 a week to 1 or 2 a month due to information noted in the newsletter.

8. This years' seminar attracted 350 people in Wichita and another 750 people in Topeka for a total attendance of over 1,100.
9. The Division of Workers Compensation advertisement efforts in the Kansas Bar Association Journal resulted in over 30 applications received and 22 applicants being interviewed for the Assistant Director and the new Administrative Law Judge position, in September, 1988; and in over 20 applicants received, 16 applicants interviewed for the Kansas City Administrative Law Judge position to replace retiring Administrative Law Judge George Corcoran.
10. A medical cost containment/fee schedule task force was formed; it has 25 members representing all interests, and has had two productive meetings.

II. THE JULY 1, 1987 ACT HAS REESTABLISHED AN EQUATABLE BALANCE TO THE ADMINISTRATION OF THE WORKERS COMPENSATION ACT FROM A "LIBERAL INTERPRETATION DOCTRINE" TO A FAIR AND IMPARTIAL APPLICATION.

A. SETTLEMENTS INCREASED IN FISCAL YEAR '89.

1. Although accidents increase from 67,386 in fiscal year '87 to 69,933 in fiscal year '88; settlements on cases set for hearings increased by 30% from 2,514 in fiscal year '87 to 3,264 in fiscal year '88.
2. No awards on work disability under the new Act have been decided at the Director's level. Some possible explanations are:
 - (a) Litigants are settling their differences and buying out of vocational rehabilitation expenses.
 - (b) No litigant wants to be the attorney who made the new "case law".
 - (c) They could be by-passing the Director's Office and applying for judicial review directly to the District Court.
 - (d) The presumption of no work disability for the injured employee who returns to the same employer or another employer at comparable wage

is being generally accepted.

- (e) Major employers (Boeing, etc.) are taking injured workers back with accommodations.
 - (f) Education through seminars, and newsletters has informed litigants what to expect in the form of judicial decisions on litigated issues.
 - (g) Employees for the most part really want to continue work; and vocational rehabilitation is working.
 - (h) It is still too soon to have viable statistics.
3. Fewer claims for repetitive use syndrome accidents are being filed; and those filed now usually allege onset of symptoms prior to July 1, 1987.
- (a) This may be explained by pure economics; i.e. employees are less willing to lose job security by alleging injury for a condition that no longer "rings the \$75,000 work disability bell".
 - (b) That is not to say that carpal tunnel syndrome and other repetitive use injuries are not serious, painful and disabling to employees.
 - (c) Employers are becoming educated in risk management and loss prevention, and closely watch body mechanics, etc. and make efforts to avoid industrial accidents from repetitive use.
 - (d) There is a push by meat packing industry to redesign machines and line work to prevent repetitive use injuries. (As evidence by a Wichita Eagle Beacon news report).
4. The fair and impartial language has eliminated some appellate delay through a perception of consistent application, and enforcement of statutory mandates.
- (a) Administrative Law Judges are interrupting the Act consistently, in compliance with legislative mandates.
 - (b) Director's Reviews are following the legislative mandates.
 - (c) Derivative result is predictability, on non-vocational rehabilitation issues and increased settlements for functional impairments.

III. THE COMMITTEE SHOULD CONSIDER MINOR AMENDMENTS TO THE NEW ACT, TO CLARIFY WHAT IS ALREADY IMPLIED, BUT MAY BE SUBJECT TO ADVERSE JUDICIAL INTERPRETATION WITHOUT CLARIFICATION.

A. K.S.A. 44-523(c) "...to an Assistant Director [or a Special Administrative Law Judge]... This would allow Director to appoint Specials to hear backlogged cases, and not overburden Assistant Directors who are hearing Director's Reviews.

B. K.S.A. 44-534(b)(1) "...if compensation in the form of medical benefits or temporary total disability benefits [or vocational rehabilitation benefits] has been paid...

K.S.A. 44-556(d) "compensation" [to include medical benefits, temporary total disability benefits or vocational rehabilitation benefits]. This would encourage employers to voluntarily pay vocational rehabilitation benefits without time consuming hearings.

C. K.S.A. 44-510g(d) "...employee is unable to perform work for the same employer [at a comparable wage] with or without accommodations or for which such employee has previously training, education, qualifications or experience to enter open labor market and earn comparable wage]. This merely clears up apparent oversight, (see handout).

D. DIRECTOR'S DECISIONS INTERPRETING LEGISLATIVE INTENT ON ISSUES OF FIRST IMPRESSION. These decisions have not been "overturned" by a Kansas Appellant Court to date, and you may want to be apprised of these decisions; these have been decided since July 1, 1988.

1. Graber vs. Pawnee Products, Inc., Docket No. 126,849 (once an application for hearing has been received by the Division of Workers Compensation evoking the jurisdiction of the Workers Compensation Act, any party effected by the hearing or proceeding may cause a **discovery** deposition of any witness to include the claimant or employer in the manner prescribed by law for like depositions in civil actions in District Courts in this state. This includes oral depositions pursuant to K.S.A. 60-230, and depositions upon written questions pursuant to K.S.A. 60-231).

2. Nelson vs. Cargill-Nutrena Feed Division and General Adjustment Bureau, and Workers Compensation Fund, Dockets No. 94,319 and 94-320, (A claimant whose case is administratively transferred to the inactive docket, can have his/her claim reinstated by filing a motion to reinstate with the Administrative Law Judge).

3. Graham vs. Ralph Frakes and Kansas Workers' Compensation Fund, Docket No. 107,387 [K.S.A. 44-514 which prohibits levy, execution, attachment, garnishment or any other collection procedure to be used against an award of compensation for the recovery or collection of a **debt**, does not apply to the fees of a reporter for a hearing or depositions assessed against the party pursuant to K.S.A. 44-555 and K.A.R 51-2-4(d), which are actual litigation expenses incurred, assessed as costs and not a debt.)
4. Dickmeyer vs. dischert d/b/a/ Nautilus Fitness Center and Kansas Workers' Compensation Fund, Docket No. 110,154 (1)(the Director, even where he has previously signed a Director's Order as the approving authority, may review the orders [awards] of the Assistant Director's or the order [award] of the Director, pursuant to K.S.A. 44-528, upon the application of any interested party for good cause shown on issues of law until the final payment of an award or until transfer of jurisdiction from the Director's Office to a District Court by a party's petition for judicial review pursuant to K.S.A. 44-556; and (2) a claimant is not entitled to an award of attorney's fees from the Workers' Compensation Fund for his efforts in establishing his burden, pursuant to K.S.A. 44-532a(a) that the employer is either [1]) financially unable to pay compensation to an injured worker as required by the Workers' Compensation Act; or [2] that such employer cannot be located and required to pay such compensation).
5. Saltkill vs. A.J. Shirk Roofing Co. and CNA Insurance Companies, Docket No. 124,874 (K.S.A. 44-555 allows an Administrative Law Judge to order a claimant to pay a respondent reimbursement ordered pursuant to K.A.R. 51-2-4(d) for court reporter's fees from an award of permanent partial disability compensation as an off set.)
6. Jackson vs. Cooper's Animal Health, Inc., Aetna Life and Casualty Company and Kansas Workers' Compensation Fund, Docket No. 122,986 (it is the duty of the Director as final approving authority pursuant to K.S.A. 44-551(a) to amend an award of compensation **sua sponte** where an Administrative Law Judge has erred, even when the parties have not raised specific issues on appeal, to ensure that the caveat "all the law in intends is just compensation - no more, no less - and neither side should be penalized where it can be avoided" as stated by the Kansas Supreme Court in Ratzlaff vs. Freideman

Service Store, 200 Kan. 430, 435, 436 Pd.2 389 (1968) is fulfilled.)

7. Whitley vs. Chevrolet-Pontiac-Canadian Group General Motors Corporation, Docket No. 115,735 (1) (the Director may not receive or consider additional evidence not previously introduced as evidence before the Administrative Law Judge after the record is closed and an award is written; and (2) the Director may not remand a case back to an Administrative Law Judge for consideration of additional evidence not previously offered before the record is closed and an award is written.)
8. Ackerly vs. Standard Oil Company, Docket No. 107,985 (an Administrative Law Judge may authorize medical treatment or evaluation by an out-of-state physician, even when there are well qualified physicians available in the state of Kansas, pursuant to K.S.A. 44-510(a).
9. Hudson vs. Martin Ebey Construction Co. and Aetna Casualty Insurance Company and Kansas Workers Compensation Fund, Docket No. 129,181 (an Administrative Law Judge or Special Administrative Law Judge lacks jurisdiction to entertain an application for preliminary hearing when written notice and a application for a preliminary hearing (form E-3) has not been filed pursuant to K.S.A. 44-534a on any preliminary hearing, whether it is the initial or any subsequent preliminary hearing).

(a) Copies of any of these decisions will be made available to Committee members upon their request.

cc: Acting Secretary Ray D. Siehndel
Each Legislator

VOCATIONAL REHABILITATION

Admin. Labor, Indus. & Small Business
 1-18-89
 Attachment III
 3-1

| PRIMARY PURPOSE 44-510g(a) | WORK DISABILITY (GENERAL BODY INJURIES) 44-510e(a) | THRESHOLD FOR REHAB 44-510g(d) | VOCATIONAL REHABILITATION SERVICES 44-510g(d) |
|--|--|---|---|
| <p>A primary purpose of the Workers Compensation Act shall be to restore to the injured employee the <u>ability to perform work in the open labor market and to earn comparable wages.</u></p> | <p>The extent of <u>permanent general disability</u> shall be the extent, expressed as a percentage, to which the ability of the employee to <u>perform work in the open labor market and to earn comparable wages</u> has been reduced.</p> | <p>Employee is unable to perform work for the same employer with or without accommodation or for which such employee has previous training, education, qualification or experience.</p> <p><u>RECOMMENDATION</u></p> <ol style="list-style-type: none"> 1. Same employer at a <u>comparable wage.</u> 2. Previous training, education, qualification or experience to enter <u>open labor market and to earn comparable wage.</u> | <p>Including re-training and job placement as may be reasonably necessary to restore to such employee the <u>ability to perform work in the open labor market and to earn comparable wages.</u></p> |

DIVISION OF WORKERS COMPENSATION UTILIZATION OF DEPT OF
HUMAN RESOURCES COMPUTER

1. Records retention and retrieval

WCSL - Work Comp Social Security Number List
WCAL - Work Comp Accident Report List
WC DL - Work Comp Docket List
WCEL - Work Comp Election List
WCFL - Work Comp Final Release List
WC8L - Work Comp Form 88 List
WCRL - Work Comp Rehabilitation List

2. Daily work processing files

WCQL - Work Comp Rehab Qualification List
WCML - Work Comp Employer List
WCLL - Work Comp Lawyer List
WCJL - Work Comp Admin. Law Judge List
WCCL - Work Comp Insurance Carrier List
WCIL - Work Comp Insurance Coverage List

3. Docket Control and Docket Information Activities

Establish case and generate notices
Case tracking

4. Vocational Rehabilitation case monitoring

Screening accident reports for potential cases
Automatic time limit tracking

5. Wish list of functions

Access to data base from outside computers
Standardized central word processing

*Senate Labor, Industry
and Small Business
Attachment III
1-18-89*

AN EXECUTIVE SUMMARY FROM DAVID A. SHUFELT
DEPARTMENT OF HUMAN RESOURCES, DIVISION OF WORKERS COMPENSATION
PREPARED FOR SENATE LABOR, INDUSTRY & SMALL BUSINESS
COMMITTEE FOR A BRIEFING ON JANUARY 18, 1989

TOPIC: An overview of the Judicial Section of the Division of Workers Compensation and efforts to eliminate the backlog of submitted cases not decided in a timely manner.

BACKGROUND: The Judicial Section of the Division of Workers Compensation is currently comprised of 8 Administrative Law Judges and 20 Special Administrative Law Judges. Prior to October 18, 1988, there were only 7 Administrative Law Judges for the state of Kansas. The Administrative Law Judges are full-time state employees and are located across the state. Each office consists of an Administrative Law Judge and Secretary, and in a few instances, additional part-time clerical help. The Special Administrative Law Judges are practicing attorneys who hear workers' compensation settlement hearings and preliminary hearings on a part-time basis. Occasionally, the Special Administrative Law Judges will conduct the regular hearing and enter the award. The fees for the services of the Special Administrative Law Judges are limited by a fee schedule set by the Director. The fees are assessed as costs against the parties to the action, normally the employer.

NEW JUDICIAL POSITION: The Division of Workers Compensation was given statutory authority to hire three additional Administrative Law Judges and one position was filled on October 18, 1988. A concerted effort by the Director to widely advertise the new position led to an impressive list of applicants. Twenty-two qualified applicants for the position were interviewed and the position was filled by the appointment of George R. Robertson of Salina, Kansas as the new Administrative Law Judge. Judge Robertson attained his bachelor of arts degree in English from Southwestern College in Winfield, Kansas. His master's degree in English from Pittsburg State University in Pittsburg, Kansas and his Juris Doctor degree from Washburn University School of Law in Topeka, Kansas. Judge Robertson was in the private practice of law for five years and his practice included representation of claimants in workers' compensation cases. The last three and a half years Judge Robertson was employed as a public defender for the Kansas Board of Indigent Defense with extensive jury trial experience.

VACANT POSITION: Former Administrative Law Judge George W. Corcoran of Kansas City, Kansas retired December 18, 1988, following 16 years service as a Workers Compensation Hearing Examiner and Administrative Law Judge. Following statewide advertisement of the vacancy, 16 qualified applicants were interviewed for the judgeship vacated by Judge Corcoran's retirement. Judge Robert H. Foerschler of Kansas City, Kansas was selected to fill the vacancy. Judge Foerschler has spent the

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past 32 years practicing law both as a partner in a law firm and as a sole practitioner. Most recently Judge Foerschler was a District Court Judge in Wyandotte County. Judge Foerschler began his duties as the new Administrative Law Judge in Kansas City, Kansas on January 9, 1989.




REDISTRICTING: The addition of an eighth Administrative Law Judge necessitated a redistricting of the judicial territories. A new district was formed in north central Kansas and Judge Robertson will office in Salina, Kansas. The new district was formed from three existing territories. The redistricting eliminated some existing and all future caseloads from the three Administrative Law Judges that were formerly assigned this territory. The redistricting also eliminated or reduced travel time for the three Judges that had formerly served this territory with resultant cost and time savings. The new district includes Reno, Harvey, McPherson counties which were formerly assigned to Administrative Law Judge David Jackson. Saline County which was formerly assigned to Administrative Law Judge James Ward and Rice, Barton, Ellsworth, Russell, Lincoln, Osborne, Mitchell, Smith, Jewell, Republic, Cloud and Ottawa counties which were formerly assigned to Administrative Law Judge Thomas Richardson. Judge Robertson will hold hearings in Salina, Great Bend, and Hutchinson.




ELIMINATION OF JUDICIAL BACKLOG: A primary goal of the Director is the elimination of the backlog of submitted workers' compensation cases that have not been decided in a timely manner by the Administrative Law Judges. A concerted effort has been recently undertaken to eliminate the backlog and to prevent its recurrence. In November and December, approximately 50 cases that had not been decided in a timely manner were reassigned for immediate decision. The cases were assigned to Special Administrative Law Judges, an Assistant Director, and an Administrative Law Judge. The Special Administrative Law Judges that were assigned cases were either former Administrative Law Judges or attorneys whose practices were predominantly in the workers' compensation field. Concurrently, the new Administrative Law Judge position in north central Kansas will further reduce the caseload of the existing Judges, who were formerly assigned that territory.



Consistent forms and procedures are being developed and implemented on a statewide basis to expedite the litigation process. Emphasis has been placed on aggressive implementation of pretrial hearing and settlement conferences by the Administrative Law Judges. This effort will either reduce the issues that need to be decided by the Judges or encourage settlement in appropriate cases. The result will be a more economical utilization of the Judges' time to decide issues that are truly controverted. The future addition of the two additional Administrative Law Judges authorized by statute will allow further redistricting and equitable distribution of assigned cases for all of the Administrative Law Judges. We hope to put one Administrative Law Judge in southeast Kansas, and an additional Judge in Shawnee

County, and then redistrict all territories for equitable distribution. The cumulative effect should be a judicial system that delivers a consistent, fair, impartial application of the Workers Compensation Act in a timely manner.

ADMINISTRATIVE LAW JUDGE GRID MAP

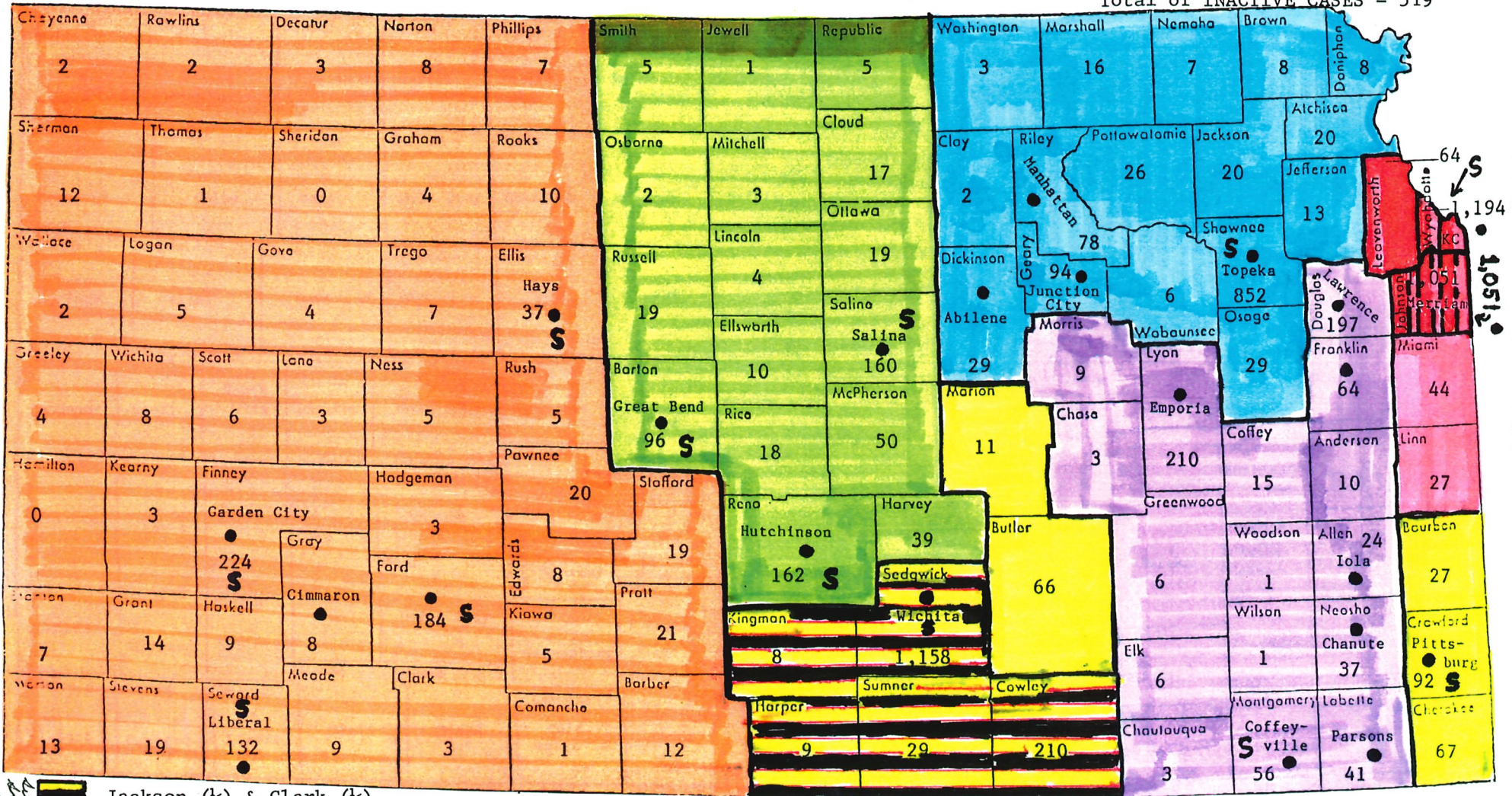
| | | |
|--|--------------------------------------|--------------------|
|  | Area #1 - Richardson 316-624-6200 | A. 1,086 B. 849 |
|  | Area #2 - Clark 316-266-8650 | A. 1,085 B. 943 |
|  | Area #3 - Jackson 316-266-8650 | A. 1,042 B. 707 |

| | | |
|---|--------------------------------------|----------------------|
|  | Area #4 - Howard 913-642-7650 | A. 1,166 B. 1,187 |
|  | Area #5 - Foerschler 913-342-4500 | A. 1,290 B. 1,194 |
|  | Area #6 - Ward 913-296-7012 | A. 1,468 B. 1,211 |

| | | |
|---|-------------------------------------|------------------|
|  | Area #7 - Robertson 913-827-0724 | A. 54 B. 610 |
|  | Area #8 - Witwer 913-831-4887 | A. 727 B. 698 |

Total of A - 7,918
Total of B - 7,399

Total of INACTIVE CASES = 519



A = Total actual cases assigned
B = Total actual cases in regional area
● = Counties where regular and preliminary hearings are held.
S = Counties where Special Administrative Law Judges are located.

JANUARY 16, 1989 / Division of
Workers Compensation/DHR.

1-16-89
in the office, including
small business
Attorney III
6-1

SUMMARY OF THE REHABILITATION EFFORTS
UNDER THE JULY 1, 1987 LEGISLATION

RICHARD L. THOMAS
REHABILITATION ADMINISTRATOR
1-18-89

During the first 18 months the Rehabilitation Section as it is today was established and the following has been accomplished.

STAFF

Staff was hired to fill the positions created by the legislation.

Rehabilitation Administrator--Richard L. Thomas
Asst. Rehabilitation Administrator-Dick Santner
Asst. Rehabilitation Administrator-Robin O'Dell
Asst. Rehabilitation Administrator-Mark Conboy
Asst. Rehabilitation Administrator-Alan Stanton

As of the last of December 1988 all the positions were filled.

REPORTING GUIDELINES

The Rehabilitation Section has developed reporting guidelines and forms necessary to report the program and outcomes of the rehabilitation efforts. These forms are currently being reviewed for revisions and changes. These guidelines and forms are available if anyone wishes to have a copy.

EDUCATIONAL EFFORTS

The first 18 months have required many presentations and meetings with parties interested in the Rehabilitation aspect of the new law. I personally have participated in over 60 presentation and meetings throughout the state of Kansas. Participants included the following groups:

Employers
Claimants
Insurance Companies
Adjusters
Education Facilities
Vendors

VENDORS

Kansas Currently has 31 qualified vendors working with the injured workers. Prior to the passage of the law there were seven or eight companies providing services in Kansas.

*Senate Labor, Industry &
Small Business
Attachment VII
1-18-89*

There has been over 200 individuals qualified to provide services as a vocational counselor, vocational evaluator and job placement specialists.

The Division will host a second vendor meeting in Topeka on February 2nd to discuss the progress under the new law and to discuss areas of conflicts.

As expected the percent of the rehabilitation cases served by private vendors has sharply increased while public rehabilitation percentages has dramatically decreased. Currently 70% of the active cases are assigned to private sector rehabilitation vendors.

MEDIATIONS

We are seeing an increase in the mediation process as the number of assessments and plans increase. The mediation process usually consist of either a face to face meeting or a telephone conference with the attorneys, vendor, claimant and the Rehabilitation Administrators assigned to the case.

This mediation process will decrease the number of cases that will require hearings on rehabilitation issues and should identify the major issues on those cases where mediation doesn't result in an agreement between the individuals involved.

CASELOAD DATA

The attachment indicates the activity that has occurred during the past 18 months. The Rehabilitation Section began the computerization of the case files the first part of February 1988. The statistics of the past 6 months more accurately reflect the rehabilitation activity of the Rehabilitation Section. The Rehabilitation Section has added 1735 new active cases since 7-1-88. There has been 261 vocational assessments and 187 vocational plans received during the 6 month reporting period.

The total active cases on hand as of 12-31-88 were 3120. Of those active cases 1928 or 62% are currently working with a rehabilitation vendor either in rehabilitation or medical management.

Our records indicate that 120 claimants returned to work through the efforts of involvement with rehabilitation vendors (public and private) during the past 6 months.

DIVISION OF WORKERS COMPENSATION
REHABILITATION SECTION

| CASELOAD DATA | 7-1-87 to 6-30-88* | 7-1-88 to 12-31-88 | 2-1-88 to 12-31-88 |
|--|-----------------------|-----------------------|-----------------------|
| ASSESSMENTS RECEIVED | | 261 | 305 |
| PLANS RECEIVED | 55-60 | 187 | 241 |
| Approved | | 84 | 110 |
| Approved with Recommendations | | 51 | 64 |
| TOTAL | | 135 | 174 |
| PLAN AMENDMENT RECEIVED | | 21 | 27 |
| Amendment Approved | | 12 | 14 |
| ORDERS FOR VOCATIONAL EVALUATIONS | | | 209 |
| TOTAL NO. OF ACTIVE CASES | 2193 | 1735 | 3120 |
| Rehabilitation | | | |
| New Law | 829 | 369 | 821 |
| Old Law | 489 | 97 | 344 |
| TOTAL | 1318 | 466 | 1165 |
| Medical Management | 352 | 493 | 763 |
| No Vendor Involved | 523 | 776 | 1192 |
| Closed Cases | 728 | 240 | 1742 |
| REHAB/MEDICAL MANAGEMENT RETURN TO WORK | 198 | 120 | 318 |

*Rehabilitation Section began computerization February 1988, therefore these totals do not reflect all activity for this period.

*Senate Labor, Industry &
Small Business
Attachment VIII
1-18-89*

Kansas Workers' Compensation Fund

Program Objectives:

Statutorily, the objective of this program is to encourage the employment of persons handicapped as a result of specific impairments by relieving employers, wholly, or partially, of workers' compensation liability resulting from compensable industrial accidents suffered by these employees. Generally, this program's objectives are derived from the following four basic services, which are implemented under the provisions of the Kansas Workers' Compensation Fund Act: 1) providing payment of workers' compensation benefits to handicapped employees, who suffer compensable injuries pursuant to K.S.A. 44-567 (second injury); 2) payments to injured workmen whose employers are uninsured and financially unable to pay compensation K.S.A. 44-532a (insolvent employer); 3) reimbursement to employers who make payments of compensation or medical expenses either voluntary or pursuant to a preliminary award or pending an appeal to an appellate court and it is later determined that said payments exceed actual liability pursuant to K.S.A. 44-534a(b) and K.S.A. 44-556d (reimbursement provisions); and 4) receipt of payments by employers where an employee is killed in an otherwise compensable accident, but in which there are no eligible dependents pursuant to K.S.A. 44-570 (non-dependent death).

Program Explanation:

- 1) Defend claims against, and if necessary, make payments on behalf of the Kansas Workers' Compensation Fund to those employers or employees entitled to payment pursuant to Kansas Statute. This duty imposes an additional duty of maintaining files on all cases in which the Kansas Workers' Compensation Fund may be held liable.
- 2) Annually report to the Governor and Legislature the receipts and expenditures from the Workers' Compensation Fund during the preceding fiscal year.
- 3) Levy an annual assessment against insurance companies and self-insurers covering workmen's compensation risks in the State of Kansas. This is to pay all amounts which may be required to be paid from the Kansas Workers' Compensation Fund during the current fiscal year, less amounts required to be transferred from the State General Fund, presently capped at \$4 million dollars.
- 4) Prepare, as a part of the budget of the Kansas Insurance Department, an analysis for the annual budget for the Kansas Workers' Compensation Fund.

Statutory History:

Effective July 1, 1974, the Kansas Legislature enacted House Bill No. 1715, creating the Kansas Workers' Compensation Fund. The administration of the Fund was assigned to the Commissioner of Insurance.

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Small Business
Attachment IX
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Proposed FY 1989 Operations:

The primary objective of the Kansas Workers' Compensation Fund is to administer and defend claims, and when necessary, make payment on behalf of the Workers' Compensation Fund. Presently, the Fund has 3,599 active claims. These claims are defended by staff of the Workers' Compensation Fund and by 67 outside contract attorneys. We anticipate liability in approximately 66% of these files. It is estimated that the Fund will expend approximately \$26.5 million dollars to pay claims and administer the Fund in Fiscal Year 1989.

Long Term Trends:

Projected long term trends seem to reflect a constant growth in expenditures for the Kansas Workers' Compensation Fund; however, the Kansas Workers' Compensation Fund statutes have been and will continue to be vulnerable to legislative amendments or judicial interpretation. That is, this Department fully cannot control the precise amount of expenditures which will be assessed against the Kansas Workers' Compensation Fund but only provide defenses against claims against the Fund so that all statutory requirements have been met.

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Small Business
Attachment X
1-18-89
10-1*

KANSAS WORKERS' COMPENSATION FUND

Prepared by the Kansas Insurance Department

CASE LOAD SCHEDULED

| Description | FY 1988 | FY 1987 | FY 1986 |
|------------------------------|---------|---------|---------|
| Total Number of Impleadings | 1,862 | 1,603 | 1,405 |
| Total Number of Closed Cases | 1,455 | 1,170 | 929 |

RECEIPTS ANALYSIS

| | FY 1988 | (% of Total) | FY 1987 | (% of Total) | FY 1986 | (% of Total) |
|---------------------------------|------------------------|----------------|------------------------|----------------|------------------------|----------------|
| Assessment Receipts | \$17,983,751.16 | (80.89) | \$ 6,542,599.05 | (55.75) | \$ 1,644,419.98 | (16.27) |
| General Fund Entitlement | 4,000,000.00 | (17.99) | 4,000,000.00 | (34.07) | 4,000,000.00 | (39.59) |
| Non-Dependent Death Receipts | 163,131.02 | (.62) | 153,000.00 | (1.30) | 122,250.00 | (1.21) |
| Miscellaneous Reimbursements | 92,052.31 | (.42) | 127,846.50 | (1.08) | 63,530.40 | (.63) |
| TOTAL RECEIPTS | 22,211,934.49 | | 10,823,445.55 | | 5,830,200.38 | |
| Previous Year Carryover Balance | 16,552.56 | (.07) | 908,156.20 | (7.73) | 4,273,895.29 | (42.30) |
| TOTAL FUNDS AVAILABLE | \$22,231,728.57 | (100.) | \$10,104,095.65 | (100.) | \$10,104,095.67 | (100.) |

EXPENDITURE ANALYSIS

| | FY 1986 | (% of Total) | FY 1987 | (% of Total) | FY 1986 | (% of Total) |
|---|-----------------|--------------|----------------|--------------|----------------|--------------|
| Disability Compensation | \$15,945,464.32 | (71.75) | \$8,167,171.06 | (69.66) | \$6,328,251.19 | (68.82) |
| Medical | | | | | | |
| Doctor | 152,173.10 | (.68) | 97,933.13 | (.84) | 73,522.55 | (.80) |
| Hospital | 246,717.49 | (1.11) | 163,295.83 | (1.39) | 108,855.68 | (1.18) |
| Drugs | 15,413.29 | (.07) | 6,509.09 | (.06) | 5,250.77 | (.06) |
| Misc. (braces, etc.) | 12,736.48 | (.06) | 11,957.03 | (.10) | 5,835.03 | (.06) |
| Other Services (mileage, etc.) | 12,994.80 | (.06) | 7,762.79 | (.07) | 5,121.72 | (.06) |
| Reimbursements to Insurance Co. (K.S.A. 44-569(a) and 44-569) | 3,118,949.78 | (14.04) | 1,054,083.62 | (9.00) | 907,162.86 | (9.86) |
| Attorneys Fees | 2,330,799.05 | (10.49) | 1,953,605.41 | (16.66) | 1,497,818.13 | (16.29) |
| Court Costs and Depositions, Medical Reports, etc. | 233,153.07 | (1.05) | 125,989.31 | (1.07) | 124,216.84 | (1.35) |
| Refunds (non-dependent death cases) | 50.00 | (.00) | 7,492.80 | (.06) | 18,500.00 | (.20) |
| Other Operating Expenses | 154,152.59 | (.69) | 127,988.12 | (1.09) | 121,404.70 | (1.32) |
| TOTAL EXPENDITURES | \$22,222,603.92 | (100.) | 11,724,535.19 | (100.) | \$9,195,939.47 | (100.) |

Workers' Compensation Fund Statistical Information

Number of Impleadings Involving
the Workers' Compensation Fund

| <u>Fiscal Year</u> | <u>Number</u> |
|--------------------|---------------|
| 1984 | 1,194 |
| 1985 | 1,260 |
| 1986 | 1,405 |
| 1987 | 1,603 |
| 1988 | 1,862 |
| 1989 (Estimated) | 2,025 |

Active Cases Against the
Workers' Compensation Fund

| <u>At the End of Fiscal Year</u> | <u>Number</u> |
|----------------------------------|---------------|
| 1984 | 1,711 |
| 1985 | 2,027 |
| 1986 | 2,515 |
| 1987 | 2,955 |
| 1988 | 3,413 |
| 1989 (Through Dec. 1988) | 3,599 |

Monthly Payments Made From the
Workers' Compensation Fund

| <u>At the End of Fiscal Year</u> | <u>Number</u> | <u>Total Amount of Monthly Payments</u> | <u>Average Monthly Payment Per Case</u> |
|----------------------------------|---------------|---|---|
| 1984 | 137 | \$ 37,682 | \$275 |
| 1985 | 151 | 44,367 | 294 |
| 1986 | 227 | 79,610 | 351 |
| 1987 | 248 | 102,717 | 414 |
| 1988 | 301 | 132,531 | 440 |
| 1989 - (Through Dec. 1988) | 305 | 140,877 | 462 |

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1-18-89 *11-1*

Awards Against the Workers'
Compensation Fund by Fiscal Year

| <u>Fiscal Year in which Awards were Made</u> | <u>Number of Awards</u> | <u>Average Amount of Award</u> |
|--|-----------------------------|------------------------------------|
| 1984 | 542 | \$12,837 |
| 1985 | 486 | 12,616 |
| 1986 | 540 | 16,072 |
| 1987 | 788 | 14,967 |
| 1988 | 836 | 14,932 |

Percentage of Impleadings that Resulted
in Awards Being Made Against
the Workers' Compensation Fund
(Extracted from Closed Claim Reports)

| <u>Cases Closed in Fiscal Year</u> | <u>Number of Impleadings</u> | <u>Number of Awards</u> | <u>Percentage of Impleadings Resulting in Awards</u> |
|--|----------------------------------|-----------------------------|--|
| 1984 | 1,114 | 719 | 65% |
| 1985 | 951 | 490 | 52% |
| 1986 | 924 | 468 | 51% |
| 1987 | 1,127 | 639 | 57% |
| 1988 | 1,455 | 1,037 | 71% |

RN:cras
ASRN/TXTFMS

WORKERS' COMPENSATION REPORT FOR DECEMBER, 1988

TO: CHRIS COWGER, ATTORNEY
 FROM: VERLENE EVANS, ACCOUNTANT

| | | |
|--------------------------------|--|----------------------|
| Work Comp Fund Balance | | \$17,621,429.97 |
| Deposits | | 210.37 |
| Compensation | | 1,421,876.09 |
| Medical | | 314,297.06 |
| Court Reporting | | 23,569.32 |
| Attorney Fees | | 200,469.04 |
| Other Operating | | 12,173.77 |
| FY 88 Cancelled Checks | | -0- |
| Refund | | 516.98 |
| Balance on December 31, 1988 | | <u>15,648,738.08</u> |
| Total December Expenditures | | 1,972,902.26 |
| Other Operating Expense Limits | | 164,801.00 |
| Expenses to Date | | 59,060.08 |
| Balance | | <u>105,740.92</u> |
| 89 YTD Comp Expense | | 7,882,203.44 |
| 89 YTD Medical Expense | | 1,834,933.92 |
| 89 YTD Court Reporter Expense | | 110,917.72 |
| 89 YTD Attorney Fee Expense | | 1,172,619.57 |
| 89 YTD Other Operating Expense | | 59,077.08 * |
| 89 YTD Refund | | 516.98 |
| 89 YTD All Expense | | <u>11,060,268.71</u> |
| 89 Beginning Balance | | 9,124.65 |
| 89 Appropriation | | 4,000,000.00 |
| 89 YTD Deposits | | 22,699,882.14 |
| 89 YTD Expenses | | 11,060,268.71 |
| December 31, 1988 Fund Balance | | <u>15,648,738.08</u> |

New Cases for December

| | |
|---------------------|------------|
| Non-Dependent Death | 0 |
| Insolvent Employer | 10 |
| Reimbursement | 3 |
| Second Injury | <u>130</u> |
| | 143 |

New Cases YTD

| | |
|---------------------|------------|
| Non-Dependent Death | 5 |
| Insolvent Employer | 27 |
| Reimbursement | 3 |
| Second Injury | 882 |
| | <u>917</u> |

Closed Cases for December

| | |
|---------------------|------------|
| Non-Dependent Death | 0 |
| Insolvent Employer | 7 |
| Reimbursement | 2 |
| Second Injury | <u>141</u> |
| | 150 |

Closed Cases YTD

| | |
|---------------------|------------|
| Non-Dependent Death | 1 |
| Insolvent Employer | 21 |
| Reimbursement | 4 |
| Second-Injury | 705 |
| | <u>731</u> |

* FY 88 \$17.00 encumbrance is in this total

*Director Labor, Industry &
 Small Business*
 Attachment XII
 1-18-89